

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIEM LLC,

Plaintiff,

v.

BIGCOMMERCE, INC.,

Defendant.

Civil Action No. 6:17-cv-00186

JURY TRIAL DEMANDED

**BIGCOMMERCE, INC.'S MOTION TO DISMISS DIEM LLC'S
FIRST AMENDED COMPLAINT**

TC Heartland LLC v. Kraft Foods Grp. Brands LLC, No. 16-341, 2017 WL 2216934, at *1 (U.S. May 22, 2017) reaffirmed *Stonite Prods. Co. v. Melvyn Lloyd Co.*, 315 U.S. 561 (1942) which held that patent venue was improper in WDPa for Stonite Products Co., a company incorporated in Pennsylvania which lacked a place of business in WDPa. BigCommerce is incorporated in Texas. It lacks any place of business in EDTX. Ex. A. BigCommerce is today's Stonite. By analogy, venue is therefore improper. Because Diem LLC has not alleged and indeed cannot allege any facts to distinguish *Stonite*, BigCommerce requests dismissal for improper venue under FRCP 12(b)(3).

Dated: May 31, 2017

Respectfully submitted,

/s/ Amit Agarwal

Amit Agarwal
California State Bar # 294269
14420 Edinburgh Moor Dr.
Wimauma, FL 33598
Telephone: (813) 955-3949
Email: ama7386@gmail.com

Bobby Lamb
State Bar No. 24080997
GILLAM & SMITH, L.L.P.
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: wrlamb@gillamsmithlaw.com

*Attorneys for Defendant
BigCommerce, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on May 31, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

/s/ Bobby Lamb

Bobby Lamb